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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/951,832	10/16/1997	CESAR Z. LINA	VAC.312B.US	2039

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LEGAL DEPARTMENT INTELLECTUAL PROPERTY  
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EXAMINER
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HAND, MELANIE JO

ART UNIT	PAPER NUMBER
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3761

MAIL DATE	DELIVERY MODE
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08/09/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

08/951,832

Applicant(s)

LINA ET AL.

Examiner

Melanie J. Hand

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3-8, 13, 16-25 and 27-30 is/are pending in the application.
- 4a) Of the above claim(s) 13, 16-21 and 28-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-8, 22, 23 and 27 is/are rejected.
- 7) ☒ Claim(s) 24, 25 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Arguments*

Applicant's arguments filed April 27, 2007 have been fully considered but they are not persuasive.

As to applicant's arguments regarding the constructive election by original presentation causing the withdrawal of claim 28 from consideration, applicant is reminded that claim 28 contains means plus function claim language that invokes 35 U.S.C. 112, sixth paragraph which clearly states that "such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof." (emphasis added) The inclusion of "equivalents thereof" includes features that may not be connected to the elected species in design or operation or effect, for example, instead of having a filter and control system to prevent contamination. Thus the claim language does not explicitly limit claim 28 to the elected species.

With respect to applicant's arguments regarding the claim rejections under 35 U.S.C. 103: With respect to claim 8, applicant argues that Martin teaches a filter between pump 43 and "outside" and thus does not teach a filter between the pump and a canister, i.e. tank 32. One of ordinary skill can easily understand from Fig. 1 that since the tank 32 and pump 43 are "inside" i.e. inside a housing, anything located between the pump and "outside" would thus also be between canister 32 and pump 43. Further, filter 50 in Fig. 1 of Martin is clearly physically located between canister 32 and pump 43. Further, in response to applicant's arguments against the Martin reference individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re*

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*Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant further argues that substantial evidence of motivation to combine the teachings of Todd and Martin and Seymour was not presented by the Office. First, it is unclear what constitutes "substantial evidence". Second, a prima facie case of obviousness has been made by the Office in accordance with MPEP 2142, thus the Office's burden has been met with respect to claim 8. Third, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a bacterial filter that prevents odor from escaping a tank versus preventing odor from escaping a pump) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Further, applicant is advised that this argument in claim limitation form would constitute functional language bearing little patentable weight. The combined teaching of Todd and Martin and Seymour teaches or fairly suggests all of the limitations of claim 8, thus the rejection of claim 8 is maintained.

Applicant did not address each and every grounds of rejection according to MPEP 2266 and 37 C.F.R. 1.111(b). A subsequent failure to do so in a future response will result in a Notice of Non-Compliant Amendment. In light of this, the rejections of the dependent claims 3-7, 22-25 and 27 have been maintained.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 3, 4, 8, 22, 23 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Todd et al (U.S. Patent No. 5,437,651) in view of Martin (U.S. Patent No. 4,631,061) and further in view of Seymour (U.S. Patent No. 4,460,369).

With respect to **claim 8**: Todd teaches a medical suction apparatus comprising an open celled polyurethane foam pad (porous pad permeable to fluids) that is foldable so as to be capable of being placed in various areas of the body between tissues (e.g. a sealable space defined in part by a wound surface). ('651, Col. 4, lines 37-39, 63-65) Tubing 20 connecting pad 12 to a suction source has a first end threaded through orifice 18 of pad backing 16 that is in fluid communication with pad 12 (Figs. 5,6). A receptacle (not shown) is attached to the apparatus 10 to collect fluid from the body through said tubing 20. Foam pad 12 with backing 16 is attachable to a suction source 14 via tubing 20 therefore the second end of tubing 20 is attached to the suction source, which in turn is operatively attached to said receptacle. Therefore said receptacle is in fluid communication with a second end of tubing 20 that is opposite the first end. Todd teaches that the apparatus is adaptable to receive a pump as a means for supplying intermittent suction to the apparatus connected thereto and operated manually or automatically for periodic drainage. ('651, Col. 7, lines 26-30) Since the pump is a suction source, it is thus fluidically connected to said receptacle.

Todd does not teach at least one bacterial filter interposed between said receptacle and said pump. Martin teaches a portable urine collection and storage device comprising a collection vessel 22 for collecting urine from a user's body, a tube 24 connecting said receptacle to a urine tank 32 and a filter 50 disposed between said tank and pump 43. ('061, Col. 2, lines 65-68, Col. 3, lines 1-6, 65-68) Martin teaches that filter 50 prevents urine odor from escaping to the atmosphere (see Abstract). Since bacteria are larger than substantially all molecules of

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compounds which cause odor, filter 50 is fully capable of functioning as a bacterial filter. Martin teaches that the filter in this position has the dual function of preventing urine odor from escaping said urine tank and reducing pump noise ('061, Col. 3, line 65 – Col. 4, line 1), therefore it would be obvious to one of ordinary skill in the art to modify the device taught by Todd so as to contain a bacterial filter between said receptacle and said suction source to which it is fluidically connected so as to prevent odor and bacteria from escaping from or entering the receptacle as taught by Martin.

Neither Todd nor Martin teaches at least peripheral areas with pressure-sensitive adhesive. Seymour teaches a sheet material coated with adhesive that is suitable for use as a surgical drape to be placed over a wound dressing. Seymour teaches that placing the sheet flat over the wound (thus defining areas of pressure sensitive adhesive extending beyond the periphery of said dressing) facilitates the retention of that wound exudates which is protective and healing ('369, Col. 2, lines 6-8), therefore it would be obvious to one of ordinary skill in the art to modify the combination taught by Todd and Martin by applying the drape taught by Seymour so as to provide peripheral areas with pressure-sensitive adhesive that extend beyond the periphery of the pad taught by Todd and Martin so as to retain healing wound exudates.

With respect to **claim 3**: Todd teaches that the receptacle is fluidically connected to said pump, said receptacle is attached to the housing for said suction source ('651, Col. 4, lines 46-48) and is thus also removably attached.

With respect to **claim 4**: Todd does not teach that said receptacle is removably received in a recess in the housing of said pump. Martin teaches housing 20 that encloses pump 43 and urine tank 32, which defines a space (recess) having a volume. Since they are connected via tubing

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only, urine tank 32 is removably received in housing 20 and is thus also removably received in the recess it occupies.

With respect to **claims 22,23**: Todd teaches an open-celled polyurethane foam, i.e. having at least 95% interconnecting cells forming a network (reticulated), wherein polyurethane is produced from a polyol (polyether) and a diisocyanate.

With respect to **claim 27**: Neither Todd nor Martin teaches peripheral areas with pressure-sensitive adhesive extending beyond the periphery for adhering to intact skin around the wound. Seymour teaches a sheet material coated with adhesive that is suitable for use as a surgical drape to be placed over a wound dressing. Seymour teaches that placing the sheet flat over the wound (thus defining areas of pressure sensitive adhesive extending beyond the periphery of said dressing) facilitates the retention of that wound exudates which is protective and healing ('369, Col. 2, lines 6-8), therefore it would be obvious to one of ordinary skill in the art to modify the combination taught by Todd and Martin by applying the drape taught by Seymour so as to provide peripheral areas with pressure-sensitive adhesive that extend beyond the periphery of the pad taught by Todd and Martin so as to retain healing wound exudates.

Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Todd et al ('651) in view of Martin ('061) and further in view of Seymour (U.S. Patent No. 4,460,369) as applied to claims 3,4,8,22, 23 and 27 above, and further in view of Poirier et al (U.S. Patent No. 4,886,502).

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With respect to **claim 5**: Neither Todd nor Martin nor Seymour teaches tubing fitted as an interference fit with said orifice into an interior portion of said pad. Poirier teaches a peritoneal access device comprising a porous polyurethane filament (polymer foam having interconnecting cells ('502, Col. 4, lines 14-18)) peritoneal collar 84 into which the peritoneum 87 and adjacent tissue can grow. Collar 84 is positioned by sliding said collar onto tube 82 wherein the inner diameter of collar 84 is smaller than the outer diameter of tube 82 so as to form an interference fit. Poirier teaches that this interference fit provides a stable seal as well as sufficient friction to prevent the collar from moving once it is properly positioned by a surgeon ('502, Col. 4, lines 5-35), therefore it would be obvious to one of ordinary skill in the art to modify the pad orifice taught by the combined teaching of Todd and Martin and Seymour so as to have an inner diameter that is smaller than the outer diameter of tubing 20 as taught by Poirier to form an effective seal and secure said pad at the desired wound site.

With respect to **claim 7**: Todd teaches an open-celled polyurethane foam, i.e. having at least 95% interconnecting cells forming a network (reticulated), wherein polyurethane is produced from a polyol (polyether) and a diisocyanate.

***Allowable Subject Matter***

Claims 24 and 25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.



***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand  
Examiner  
Art Unit 3761

July 10, 2007

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read 'Tatyana', is written over the printed name and title of the Supervisory Primary Examiner.